IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5269 OF 2005

Union of India and ors. ..Petitioners

Vs.

Shri K.M. Khopkar and ors. ..Respondents

Mr. R.R. Shetty with Ms. Anamika Malhotra for petitioners.

Mr. Neel Helekar for respondents.

CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.

Dated: December 11, 2006.

P.C.:

1. Being aggrieved by the Judgment and Order dated 28/2/2005 in O.A. No.124 of 2004 rendered by the Division Bench of the Central Administrative Tribunal at Mumbai, the Union of India through the Directorate General of Quality Assurance, Ministry of Defence, New Delhi as well as the Department of Personnel & Training, New Delhi have filed this petition. We have heard Mr. R.R. Shetty with Ms. Anamika Malhotra the learned counsel for the petitioners and Mr. Neel Helekar the learned counsel for the respondents. This petition was earlier

dismissed in default and was subsequently restored by our order dated 17/11/2006.

2. The respondents had approached the Central Administrative Tribunal challenging the order dated 9/5/2003 passed by the Ministry of Defence cancelling the A.C.P. Financial upgradation granted to all the Draughtsmen vide various orders with immediate effect. It was contended that all the applicants were working as Draughtsmen-II and III under the Controller of Quality Assurance (Ammunition) Khadkee, Pune, whereas applicant no.9 was working at CQA (ME), Khadkee, Pune. The Government of India, Ministry of Defence issued a office memorandum on 13/3/1984 directing the scale of pay of Draughtsmen Govt. Resolution III, II & I in the Departments of Government of India, other than CPWD, to extend the benefits of the payscale as per the Arbitration Award and this benefit was given notionally from 13/5/1982 but actually from 1/1/1983. Another notification dated 9/10/1994 was issued by the Government extending the revised payscale of Draughtsmen of CPWD to other Departments of Govt. irrespective of their recruitment qualifications. The Ministry of Defence issued orders dated 15/9/1995

based on the above notification extending the benefit which was applicable to DGQA organisation.

3. The Ministry of Personnel, Public Grievances and Pension (DOPT) vide its O.M. dated 9/8/1999 issued the orders for Assured Career Progression Scheme (ACP Scheme) for Central Govt. employees and under the said scheme two financial upgradations in the entire Govt. Service career of an employee are to be counted against regular promotions and this shall be available only if, no regular promotion during the prescribed period of 12th and 24th years have been availed by an employee. If an employee has already got one promotion he was qualified for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme and in case two prior promotions on regular basis have already been received by an employee, then no benefit under the ACP Scheme shall accrue to him.

4. It appears that by the impugned order dated 9/5/2003 before the Tribunal, the benefits granted under the ACP Scheme were sought to be withdrawn, contending that the upgradations in the payscale of

Draughtsmen, were already granted to the applicants by the order dated 15/9/1995 or the earlier notification dated 9/10/1994 and the said was, in fact, a promotion. The Tribunal held that by placement in higher scale and redesignation under O.M. dated 15/9/1995, the pay was fixed in terms of pay 97 of OM & FR 22(I)(a)(2) and the said did not amount to promotions in as much as there were no higher responsibilities or duties of greater importance assigned. In addition, there was absence of the promotion process either on the basis of seniority-cum-merit or merit-cum-seniority in the said upgradation by OM dated 15/9/1995. The Tribunal concluded, " thus the placement of the pay revision granted in pursuance to CPWD Arbitration Award cannot be treated as regular promotion and ACP benefit rightly granted to the applicant cannot be withdrawn".

5. This view taken by the Tribunal cannot be said to be grossly erroneous or perverse so as to call for interference at our hands. Mr. Shetty the learned counsel for the petitioners relied upon the Judgment in the case of State of Rajasthan vs. Fateh Chand Soni **[(1996) 1 SCC 562]** in support of his contentions

that the upgradation given by the OM dated 15/9/1995 amounted to promotion. We have gone through the said Judgment and we are afraid Mr.Shetty's reliance is misplaced. In fact, the said Judgment supports the view taken by the Tribunal in as much as that the upgradation granted in terms of implementation of the CPWD Arbitration Award and the OM dated 15/9/1995 could not be termed as promotion.

6. Hence, the challenge to the impugned Judgment of the Tribunal fails at the threshold and consequently the petition is rejected summarily.

**(J.H. Bhatia, J.)** **(B.H. Marlapalle,J.)**